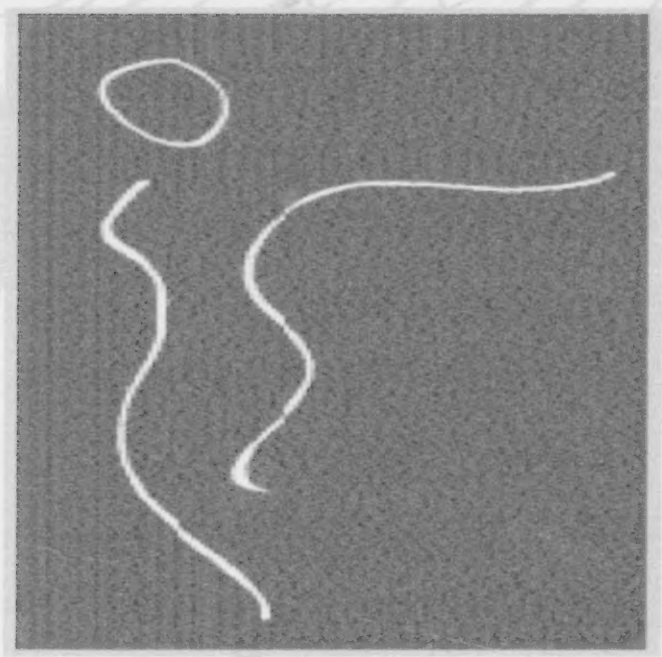
Surviving Sexual Assault

a woman's guide



Surviving
Coping
Hope
Justice

Surviving Sexual Assault

a woman's guide

Women's Policy Office
October 2003

Violence **Prevention** Initiative

For Immediate Assistance

Newfoundland and Labrador Sexual Assault Crisis and Prevention Center **24 Hours a day**

Crisis Line for:

Newfoundland and Labrador	1-800-726-2743
St. John's	709-726-1411

Victim Services Offices:

Carbonear	709-945-3019
Clarenville	709-466-5808
Corner Brook	709-637-2614
Gander	709-256-1028
Grand Falls-Windsor	709-292-4544
Happy Valley-Goose Bay	709-896-0446
Nain	709-922-2360
Port Saunders	709-861-2147
St. John's	709-729-0900
Stephenville	709-643-6588

Health and Community Services:

There is an overnight emergency service for victims of violence. A mental health/social worker is on call.

St. John's Region	
(Toll free)	1-888-737-4668
Eastern Region	709-759-3369
Central Region (East)	709-651-3306
after hours	709-256-5552
Central Region (West)	709-292-1210
after hours press 0	709-292-2500
Grenfell Region	709-454-0149
Health Labrador Corp	709-896-2804
Labrador Inuit Health Commission	709-497-8356
Western Region	709-637-5245

Respect

For Information on Violence Prevention Initiatives:

Avalon Region

Regional Coordinating Coalition Against Violence, St. John's	709-757-0137

Eastern Region

Eastern Region Committee Against Violence	709-466-5737

Central Region

Central Regional Committee Against Violence, Grand Falls-Windsor	709-489-8828

Western Region

Western Regional Coalition to End Violence	709-634-4199
Bay St. George Coalition to End Violence, Stephenville	709-643-4444
Committee on Family Violence, Corner Brook	709-634-8815
Help Committee, Burgeo	709-886-2185
Southwest Coalition to End Violence Committee, Port Aux Basques	709-695-7367

Northern

Grenfell Regional Anti-Violence Team	709-454-3351

Labrador

Labradorians For Peaceful Communities	709-896-8080

Citizen's Crime Prevention Association of Newfoundland and Labrador:

709-466-7948

Who is this booklet for?

This booklet is written to provide information to women. If you have been sexually assaulted, or if you work with survivors of sexual assault, we hope it will be useful.

Acknowledgments

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Regard

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RECOMMENDED READING

INTRODUCTION

Q: What is sexual assault?

A: Sexual assault is a criminal offence. When one person forces sexual activity including kissing, fondling, intercourse, oral sex, or anal sex on another, it is sexual assault. Sexual assault sometimes involves physical injury but not always. Not all physical injuries can be seen. It may or may not involve the threat of a weapon (real or imitation). A person is at a higher risk of being assaulted in their own home. The woman often knows the person who assaulted her as an acquaintance, friend, neighbor, date, classmate, co-worker or relative.

Q: Who is assaulted and who are the people who assault?

A: In Canada, sexual violence is widespread. Those most at risk are women, children and Aboriginal people. According to one study, 51% of all Canadian women had experienced at least one instance of sexual violence after the age of 16. A large proportion of sexual violence is also directed at children and youth. In Canada, at least one in four women can expect to be sexually assaulted at some point in their lives.

Q: Why does it happen?

A: Violence is often used by individuals or groups with power to control less powerful and more vulnerable individuals or groups. Assaults often involve a demonstration of power, domination, aggression and humiliation. Sexual assault is a crime of violence that has nothing to do with sex. We should not be surprised that women are the most common targets of sexual assault, for they have traditionally held less social, economic, and political power than men.

THE LAW

Q: How is sexual assault defined legally?

A: In 1983 the main sexual offences of "rape" and "indecent assault" were removed from the Criminal Code of Canada and replaced with "sexual assault."

There are three levels of sexual assault:

Level 1:

Simple sexual assault occurs when any form of sexual activity is forced on a person without that person's consent. There are few signs of physical injury or abuse. The maximum penalty is ten years imprisonment if prosecuted by indictment and 18 months if prosecuted by summary conviction.

Level 2:

Sexual assault involving bodily harm, weapons or more than one assailant occurs when one person forces sexual activity on another using a weapon (real or imitation) or the threat of a weapon; when threats are made against someone other than the person being attacked; when the victim is physically harmed; or when there is more than one person involved in the assault. The maximum penalty is 14 years imprisonment. If the weapon used was a firearm (which must be real), then the minimum sentence is four years.

Level 3

Aggravated sexual assault occurs when the victim is wounded, maimed, disfigured or when the victim's life is endangered. The maximum penalty may be life imprisonment. A four-year minimum sentence is imposed for the use of a firearm in the commission of the offence.

Courage

Sentencing

The sentencing depends on the level of sexual assault under which the offender is charged. The range is absolute discharge to life imprisonment. The Criminal Code states that abuse of an offender's spouse or child and abuse of a position of trust or authority are to be considered aggravated factors in sentencing.

The victim has an important role at the sentencing hearing. In the vast majority of cases the victim, with the assistance of a victim services worker, files a victim impact statement with the court outlining the impact of the offence. The victim has the option to read the statement in court. Evidence from others, such as counselors, may be considered at the sentencing hearing.

Absolute and conditional discharges cannot be given for sexual assault with a weapon and aggravated sexual assault. Since 1996, conditional sentences of imprisonment have been available as a sentencing option. When this sentence is granted the offender is allowed to serve the sentence of imprisonment in the community.

This often involves "house arrest", no contact with the victim, and/or participation in an alcohol or drug addiction program. This type of sentence is only available if the term of imprisonment is less than two years.

Any sentence of imprisonment, if it doesn't exceed two years, can be accompanied by a probation order up to three years.

AFTER SEXUAL ASSAULT

Feelings after sexual assault

There is no "right way" for someone to feel. Survivors of sexual assault react in a variety of ways. One person may be obviously upset, another outwardly controlled and calm, another appearing not to care about anything. If you are a survivor, it is important to trust your feelings and allow yourself to experience them, whatever they may be. It is important for you to know that it is not your fault and to have supportive people around you. Do not blame yourself. There is nothing you did to deserve the attack.

You may want to talk to someone about your feelings, either a professional or someone who can relate to what happened to you. Help is available from the sexual assault crisis center, police, hospitals, your family doctor, a public health nurse, social worker, minister or teacher.

Insight

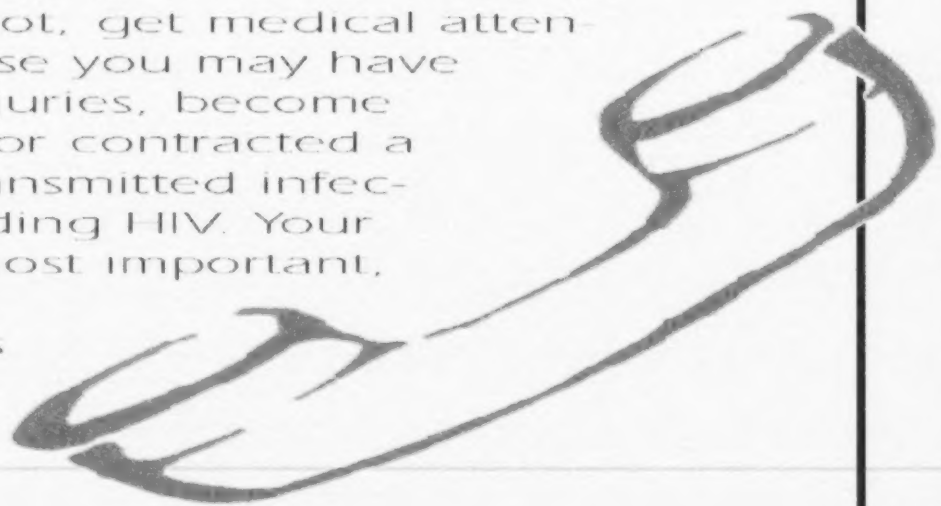
Sexual assault crisis centers provide services to victims such as emotional support, counseling, referrals to other agencies and accompanying victims to hospital or to court. The staff at the centers are usually volunteers.

At sexual assault crisis centers, sexual assault workers are trained to deal with sexual assault and provide 24-hour crisis intervention. Women's Centers can also provide information and emotional support.

Get medical attention

It is a good idea to get medical attention quickly to treat any injuries you may be suffering. A doctor or hospital staff can answer questions about sexually transmitted diseases and about possible pregnancy. A medical exam can also provide valuable evidence should a survivor decide to lay charges. Hospitals are not legally required to report a sexual assault as long as you are over 16.

Whether you want to contact the police or not, get medical attention because you may have suffered injuries, become pregnant, or contracted a sexually transmitted infection, including HIV. Your health is most important, forensic evidence is secondary.



You may know right away that you want to make a complaint. In this case, a medical exam is a good source of evidence.

Try not to shower, comb your hair, wash your hands, or wash the clothes you were wearing. This may destroy evidence. You should take a complete change of clothes to the hospital, as all of your clothing may become evidence.

Try not to take any drugs or medicine, including tranquilizers or alcohol, because they may make it hard to cope with a medical exam or police questioning. If you have been drinking, do not wait for the alcohol to be out of your system.

At the hospital, the doctor should:

- ask you what happened
- examine your injuries and treat them if necessary
- offer antibiotics for venereal disease such as gonorrhea and chlamydia
- offer you a Morning After Pill, if there is a risk of pregnancy.
- offer to examine you in order to collect evidence for the police (including swabs for semen, blood, hair and skin)
- collect your clothes for further evidence.

Consider

It is important to know that you have the right to refuse any or all of the medical examination. However, the purpose of the exam is to make sure you are not seriously injured, to provide protection from disease and pregnancy, and finally to collect helpful evidence if you choose to make a complaint to the police. Collecting evidence includes the collection of clothing and taking swabs.

There is no legal requirement for a doctor to make a report unless you are under the age of 16.

If you choose to involve the police

If you notify the police, they will question you about what happened. You should try to tell them every detail you can remember no matter how insignificant you think it is. This can take a very long time. Provide the names of potential witnesses, if there are any.

As soon as you can, write down every detail of the assault that you remember.

This will help you to deal with the assault emotionally and may also help in the police investigation and/or trial. Your written notes will help you remember details clearly.

After you have given your statement to the police you may be asked to go to the police station to identify the person who assaulted you. Many women find this upsetting. You might want to ask a friend, relative or counselor to accompany you to the station.

If the police have enough evidence to lay a charge, then one of the following may occur:

- The police will arrest the accused and bring him to court. At court, he may be released on conditions (including no contact with the complainant) or the judge may order him detained in custody until his trial.

- The police will arrest the accused and choose to release him themselves. This release is on conditions (including no contact with the complainant).

- The police may summons the accused to court. (This is the least common procedure.)

THE COURT PROCESS

The court process can move in several directions depending on the accused's plea of guilty or not guilty. If the accused pleads guilty, then a date for a sentencing hearing is set.

You are contacted to determine if you want to provide a victim impact statement.

If the accused pleads not guilty:

- If the accused chooses to be tried in Provincial Court, then a trial date is set. A subpoena will be issued for the complainant to attend court on that date.
- If the accused chooses to be tried in Supreme Court (either by a judge alone or by a judge and jury), then a date is set for a preliminary inquiry which is held in provincial court. The complainant will receive a subpoena.

A preliminary inquiry is a hearing to determine if there is sufficient evidence for a trial. Most accused are committed to stand trial.

The case is then forwarded to the Supreme Court and a trial date is set and another subpoena is issued.

If an accused is released on bail, the judge usually gives a "no contact order" which forbids the accused from calling you or going to your home or workplace or school.

If a "no contact order" is breached and a complaint is made to the police, the accused is often arrested and brought to court for a bail hearing. Many times in this situation an accused is ordered detained in custody.

The Crown Attorney asks for an "order for the non-publication of the complainant's identity" at the accused's first court appearance. The existence of this order is confirmed at the preliminary inquiry and/or trial.

A victim services worker can accompany you to court, explain how the trial will proceed, and update you on the case. This helps make the court process a little easier.

If there is insufficient evidence, the charges may be dismissed and the person who assaulted you is set free. Should the trial go ahead, it may not occur for several months or even a year, so be prepared to wait.

During the trial

In preparation for trial and/or Preliminary Inquiry, complainants are routinely referred to Victim Services for court preparation.

Most Crown Attorneys will meet with you in advance of court to review your statement and answer any questions you may have. The Crown Attorney works for the government, and is not your lawyer per se. As a victim, you are a witness in a case where a criminal charge is laid against the accused by the police. When you are asked to testify in court, you will be a key witness for the Crown and your testimony will be extremely important in obtaining a conviction. Speak as clearly and calmly as you can.

If you don't understand a question, ask to have it repeated. You will most likely be asked questions by both the prosecuting (Crown) and defense lawyers.

Whether you gave your consent to the sexual activity will be a key issue.

Consent is defined in the Criminal Code as "the voluntary agreement of the complainant to engage in the sexual activity in question."

There is no consent if:

- someone else provides the agreement;
- the complainant is incapable of consenting;
- the agreement is induced by abusing a position of trust, power, or authority;
- the complainant expresses by words or conduct a lack of consent;
- the complainant expressed by words or conduct a lack of agreement to continue with the sexual activity.

It is not a defense to a charge of sexual assault for an accused to say he believed the complainant was consenting if:

- the belief arose from his self-induced intoxication or his recklessness or wilful blindness.
- he did not take reasonable steps in the circumstances known to him to ascertain the complainant's consent.

You cannot be questioned on other sexual activity occurring before or after the alleged offence, unless ordered by the judge.

Esteem

The hearing to determine the admissibility of this evidence is not open to the public and the complainant cannot be forced to testify at the hearing.

The defense can also apply for access to third party records relating to the allegation. These would be records that might be medical, counseling or social services. The defense must show that the records are likely relevant to an issue at trial. A hearing is held in the absence of the public to determine if the evidence is relevant. The complainant may make submissions to the court at the hearing on the issue including any privacy concerns.

The court can review the records to determine their relevance and the privacy interests of the complainant. The complainant is entitled to independent counsel.

If the accused is acquitted (found not guilty), an appeal can be filed within 30 days. A conviction and/or a sentence can also be appealed.

The right to appeal an acquittal or a conviction is based on the discovery of new evidence or errors which were made at the original trial.

Feelings during the trial

The attitudes and reaction of people around you can affect how well you cope with the court experience. An understanding friend or relative, or a sexual assault worker, can provide support throughout the procedure.

It can be very frightening to be in the same room with the person who attacked you. You may feel as if you are reliving the assault. This is a common reaction. Take your time when you are on the stand and if you need a break, ask for one.

Court proceedings are impersonal and cold, and you must be prepared to cope. The court process exists to determine the facts in relation to the Criminal Code and, if the accused is found guilty, to determine punishment.

If the person who assaulted you is found not guilty it does not mean the assault did not take place. Do not blame yourself. Even if you were dating the person who attacked you, you in no way caused the assault. Absolutely nothing gives anyone the right to force any unwanted sexual activity on another person.

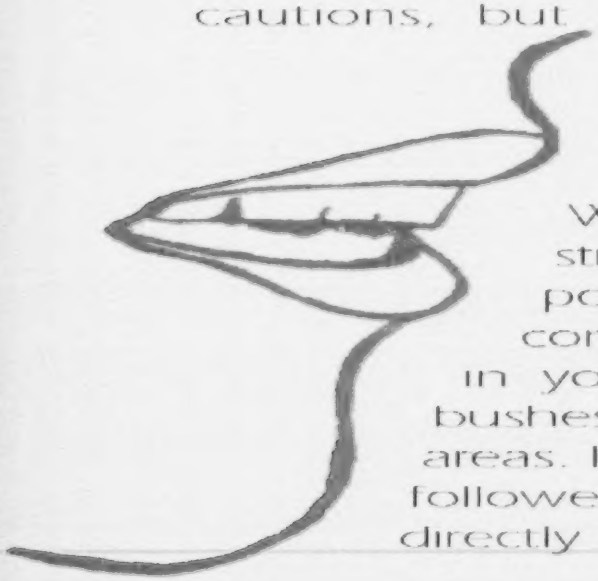
VIOLENCE AGAINST WOMEN

The assaliant is usually known

Sexual assaults often occur in situations where the abuser is in a position of trust in relation to the person being assaulted, such as a husband, father, guardian, other relative, doctor, coach, religious advisor, teacher, or employer. The majority of sexual assaults are committed by a man known to the victim who is likely to use verbal pressure, tricks and/or threats during an assault. Two thirds of sexual assaults take place in a private home.

Women and children are more likely to be sexually assaulted by a family member than by a stranger.

Attacks by a stranger are not as common as some other forms of assault, but the possibility of stranger violence does make women fearful. It is unfair that women have to take special precautions, but there are some things you can do to reduce the risk of being assaulted.



When you are alone on a street at night, walk purposefully and quickly. Look confident. Carry your keys in your hand. Avoid alleys, bushes, doorways, and unlit areas. If you think you are being followed, turn around and look directly at the person.

If you are being followed, walk directly to the nearest occupied house or business. If you are being followed by a car, turn around and walk in the other direction. The driver will have to turn around to follow you.

In your interpersonal relationships

- Tell your partner clearly what your sexual limits are.
- Trust your feelings. If something doesn't feel right, it probably isn't. Listen to your inner voice.
- If something happens that you don't want to happen, use a firm and powerful voice that says, "Stop this! I'm not enjoying it!"
- In all situations, express your opinions and your independence.

Sexual assault is a crime and a social problem. All of us must take responsibility for having created a society in which women are undervalued or portrayed in a degrading and humiliating way. Men must assume special responsibility since they have more social, economic and political power than women in our society.

Your rights

Attitudes toward women must change before women will be able to walk down the street or be alone without feeling fear. Men must play an equal role with women in removing the causes of violence against women.

Calm

and in providing services to survivors. Women have traditionally carried most of the burden for this. Public awareness and understanding is essential, especially in the criminal justice system, health care system, social services, and correctional services. You can also sue your attacker in civil court for damages (physical, emotional or property) that you endured as a result of the assault.

However, if you choose not to call the police right away your civil court claim could be rejected.

Your right to compensation is independent of what happens in court, and you have a year to make a claim.

Although it is correct to say that if the police do not lay charges you can hire your own lawyer to prosecute the case, it should also be pointed out that the Crown can intervene in any such prosecution and take control of the case.

Most women live in fear of sexual violence. Unless the incidence of sexual assault committed against women is all but eradicated, true equality for women in this society can never be achieved.

Women cannot be truly equal to men until we are free from fear of violence and intimidation.

Did you know that?

- Your testimony alone could be enough to have the person who assaulted you convicted.
- A spouse can be charged with sexual assault.
- While reporting sexual assault of an adult is voluntary, it is illegal not to report an assault when the victim is a child. (Under age 16)
- The person who assaulted you cannot use "being drunk" as a valid defense against a charge of sexual assault.
- It is never too late to report a sexual assault.
- Proof of penetration is no longer required to obtain a conviction of sexual assault.

Respect

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